

MONTANA LEGISLATIVE HISTORY

Chapter 540 19 87

Bill H 504 S _____

Original bill & history X c

H. Committee on STATE ADMIN

Hearing Date(s) 2/10/87 X c

Exec. ACTION 2/11/87 X c

_____ c

_____ c

Date Out _____ c

S. Committee on STATE ADMIN

Hearing Date(s) 3/3/87 X c
& EXEC ACTION _____ c

Judiciary _____ c

3/17/87 X c

EXEC. ACTION 3/21/87 X c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE FINAL STATUS

RETURNED TO HOUSE WITH AMENDMENTS
 4/08 2ND READING AMENDMENTS CONCURRED 87 3
 4/09 3RD READING AMENDMENTS CONCURRED 93 3
 4/13 SIGNED BY SPEAKER
 4/13 SIGNED BY PRESIDENT

 4/14 TRANSMITTED TO GOVERNOR
 4/17 SIGNED BY GOVERNOR
 CHAPTER NUMBER 531 EFFECTIVE DATE: 10/01/87

HB 504 INTRODUCED BY KADAS LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION

1/28 INTRODUCED
 1/28 REFERRED TO STATE ADMINISTRATION
 2/10 HEARING
 2/11 COMMITTEE REPORT--BILL PASSED
 2/13 2ND READING PASSED 61 34
 2/14 3RD READING PASSED 63 31

 TRANSMITTED TO SENATE
 2/16 REFERRED TO STATE ADMINISTRATION
 3/03 HEARING
 3/04 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/06 2ND READING CONCURRED 31 14
 3/09 REREFERRED TO JUDICIARY
 3/23 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED AS AMENDED 50 0
 3/30 3RD READING CONCURRED 45 5

 RETURNED TO HOUSE WITH AMENDMENTS
 4/08 2ND READING AMENDMENTS CONCURRED 76 8
 4/09 3RD READING AMENDMENTS CONCURRED 85 10
 4/14 SIGNED BY SPEAKER
 4/14 SIGNED BY PRESIDENT

 4/15 TRANSMITTED TO GOVERNOR
 4/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 540 EFFECTIVE DATE: 10/01/87

HB 505 INTRODUCED BY MENAHAN REVISING ACUPUNCTURIST LICENSING REQUIREMENTS BY REQUEST OF BOARD OF MEDICAL EXAMINERS

1/28 INTRODUCED
 1/28 REFERRED TO BUSINESS & LABOR
 2/11 HEARING
 2/11 COMMITTEE REPORT--BILL PASSED
 2/14 2ND READING PASSED 95 1
 2/16 3RD READING PASSED 89 3

 TRANSMITTED TO SENATE
 2/17 REFERRED TO BUSINESS & INDUSTRY
 3/11 HEARING
 3/12 COMMITTEE REPORT--BILL CONCURRED
 3/19 2ND READING CONCURRED 50 0
 3/21 3RD READING CONCURRED 41 0

 RETURNED TO HOUSE
 3/24 SIGNED BY SPEAKER
 3/25 SIGNED BY PRESIDENT

 3/26 TRANSMITTED TO GOVERNOR

1 House BILL NO. 504
2 INTRODUCED BY Rados
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING CHALLENGES TO
5 INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS TO THOSE
6 ALLEGING PROCEDURAL DEFECTS IN COMPLYING WITH THE ELECTION
7 LAWS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA."
8

9 WHEREAS, Article II, section 1, of the Montana
10 Constitution recognizes that all political power is vested
11 in and derived from the people and that all government of
12 right originates with the people, is founded on their will
13 only, and is instituted solely for the good of the whole;
14 and

15 WHEREAS, the right of the people to make statutory
16 changes by initiative is retained in Article III, section 4,
17 of the Montana Constitution; and

18 WHEREAS, the right of the people to alter their
19 Constitution by initiative is retained in Article XIV,
20 section 9, of the Montana Constitution.
21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 3-2-202, MCA, is amended to read:

24 "3-2-202. Original jurisdiction. (1) in Except as
25 provided in subsection (3), in the exercise of its original

1 jurisdiction, the supreme court has power to issue writs of
2 mandamus, certiorari, prohibition, injunction, and habeas
3 corpus.

4 (2) It also has power to issue all other writs
5 necessary and proper to the complete exercise of its
6 appellate jurisdiction.

7 (3) Prior to an election on a ballot measure submitted
8 by initiative or referendum, an action may only be brought
9 alleging procedural defects in complying with the election
10 laws."

11 Section 2. Section 3-5-302, MCA, is amended to read:

12 "3-5-302. Original jurisdiction. (1) The Except as
13 provided in subsection (6), the district court has original
14 jurisdiction in:

15 (a) all criminal cases amounting to felony;

16 (b) all civil and probate matters;

17 (c) all cases at law and in equity;

18 (d) all cases of misdemeanor not otherwise provided
19 for; and

20 (e) all such special actions and proceedings as are
21 not otherwise provided for.

22 (2) The district court has concurrent original
23 jurisdiction with the justice's court in the following
24 criminal cases amounting to misdemeanor:

25 (a) misdemeanors arising at the same time as and out

1 of the same transaction as a felony or misdemeanor offense
2 charged in district court;

3 (b) misdemeanors resulting from the reduction of a
4 felony or misdemeanor offense charged in the district court;
5 and

6 (c) misdemeanors resulting from a finding of a lesser
7 included offense in a felony or misdemeanor case tried in
8 district court.

9 (3) The district court has exclusive original
10 jurisdiction in all civil actions that might result in a
11 judgment against the state for the payment of money.

12 (4) The district court has the power of naturalization
13 and of issuing papers therefor in all cases where it is
14 authorized to do so by the laws of the United States.

15 (5) The district court and its judges have power to
16 issue, hear, and determine writs of mandamus, quo warranto,
17 certiorari, prohibition, and injunction, other original
18 remedial writs, and all writs of habeas corpus on petition
19 by or on behalf of any person held in actual custody in
20 their respective districts. Injunctions and writs of
21 prohibition and habeas corpus may be issued and served on
22 legal holidays and nonjudicial days.

23 (6) Prior to an election on a ballot measure submitted
24 by initiative or referendum, an action may only be brought
25 alleging procedural defects in complying with the election

1 laws, or as provided in 13-27-316."

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

State Administration COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
459	1/26/87	2/17/87									
469	1/26/87	2/5/87		2/5/87							
481	1/27/87	2/5/87			2/5/87						
484	1/27/87	2/5/87		2/5/87							
485	1/27/87	2/6/87		2/6/87							
498	1/28/87	2/6/87			2/6/87						
504	1/28/87	2/10/87		2/12/87							
510	1/28/87	2/4/87			2/4/87						
538	1/30/87	2/10/87				2/12/87					
552	1/30/87	2/4/87	2/12/87	tabled							
553	1/30/87	2/03/87				2/3/87					
559	1/31/87	2/5/87	2/5/87	tabled							
582	2/3/87	2/11/87			2/12/87						
584	2/3/87	2/11/87			2/12/87						

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 10, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales on February 10, 1987, at 9:00 a.m. in Room 437 of the State Capitol.

ROLL CALL: Reps. Pistoria and Peterson were excused. All other committee members were present.

CONSIDERATION OF HOUSE BILL NO. 418: Rep. Bachini, House District #14 and primary sponsor of the bill, stated HB 418 is basically a self-help bill. The bill will assess each member of the Police Officers Association .5% of his paid monthly wage for a life insurance premium. This legislation will not cost the city or state one penny. The reason for the assessment is to provide some insurance for its members. Rep. Bachini submitted some proposed amendments to the committee members (Exhibit #1).

PROPOSERS: Kevin Olson, a police officer for the City of Havre and a current member of the Legislative Committee for the Montana Police Protective Association, testified in support of HB 418 and submitted written testimony (Exhibit #2). HB 418 would assess a .5% deduction to be withheld from the wage of each police officer in the Municipal Police Retirement System to be used to create a death and disability benefit plan for all police officers and possibly their spouses and children.

Larry Conner, a police officer for the City of Bozeman and Legislative Chairman of the Montana Police Association, spoke in support of HB 418 and submitted written testimony (Exhibit #3). For the last several years, members have indicated they would like to have a group insurance policy. This legislation would allow a funding source for this benefit. The Association strongly supports this legislation.

Naomi Sullivan, a widow of a police officer from Anaconda, reaffirmed the need for death and disability benefits for police officers who lose their life in the line of duty. Montana is one of the few states that does not provide some type of death benefit for the survivors of police officers. Some states offer as much as \$100,000-\$200,000 death benefits; nearly all states offer some benefit. In a way, by providing these benefits, these states recognize the brave sacrifices made by the deceased police officers and express

line of duty. He said he certainly was and that he has made adequate provisions for his family in that eventuality. Rep. O'Connell asked Kevin Olson if the bill could be written to just include those who belong to the MPPA. He replied that they want to make membership mandatory so there is always a guaranteed source of funding.

Rep. Bachini closed discussion on HB 418 stating that the benefits of the bill far outweigh what the opposition has stated. 93% of the members of the Association voted in favor of this bill as did 85% of the retired members of the Association. In order for the benefit plan to be successful, the bill has to remain as it is, including his proposed amendments.

CONSIDERATION OF HOUSE BILL NO. 504: Rep. Kadas, House District #55 and sponsor of the bill, stated the bill addresses the initiative process and the ability of people to bring to the Supreme Court the legitimacy of an initiative. He is concerned that the whole initiative process is going downhill because whenever someone does not like an initiative, it goes to the courts. Often an initiative gets tied up in court before it is even voted on. What this bill does is to allow an initiative to be brought to the court if there is a procedural problem. It would not allow an initiative to be challenged on grounds of unconstitutionality in content.

PROPONENTS: Kim Wilson, representing Common Cause of Montana, spoke in support of HB 504 and introduced amendments which are submitted as Exhibit #5. Common Cause believes Montana is blessed with a very efficient and workable initiative process which allows citizens a much greater role in the lawmaking than citizens of other states. They support the integrity of the initiative process and are in support of giving people the fullest access to the lawmaking process. While they support HB 504, they do feel the public must not be unduly limited in their right to challenge initiative issues. He agrees with Rep. Kadas that there should be the ability to challenge an initiative on procedural grounds but also thinks the public should have a right to challenge an initiative on further grounds, such as an initiative being unconstitutional on its face. HB 504 with the amendment proposed in Exhibit #4 will also restrict any challenges on the substance of a bill. The bill sends a strong signal to the people of Montana that the initiative process is alive and well. HB 504 as drafted is a good bill. He suggested the committee look at his additional amendments and urged support of the bill.

Larry Akey, Chief Deputy to Secretary of State Jim Waltermire, stated support for HB 504. Secretary Waltermire believes the initiative process is an important part of

the Montana political heritage and that heritage deserves protection from challenge by special interest groups through the court system. He supports the bill with a couple of reservations: 1) there needs to be a time limit set in the bill so untimely challenges are prevented; and 2) attempting to eliminate jurisdiction of the courts might be held unconstitutional as an undue violation of separation of powers. He has concerns that Rep. Kadas' bill could not withstand a constitutional test. With those reservations, the Secretary of State's Office supports the bill and urged a do pass.

OPPONENTS: None

DISCUSSION OF HOUSE BILL NO. 504: Rep. Nelson asked Kim Wilson if the constitutionality of an initiative was determined by the Attorney General before it went onto the ballot. Mr. Wilson replied that the Attorney General cannot refuse an initiative on the grounds of unconstitutionality. Judy Browning from the Attorney General's office interjected that under the present statutes, the Attorney General does not have the authority to rule on the constitutional content of an initiative.

Rep. Kadas closed discussion on HB 504 stating that the bill just changes when the initiative can be challenged. He opposed the amendments submitted by Common Cause (Exhibit #5). He addressed Larry Akey's concern regarding the timeframe for an initiative challenge for procedural reasons; he felt perhaps a 30-day timeframe would be more appropriated.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 22: Rep. Rapp-Svrcek, House District #51 and primary sponsor of the bill, stated there has been and continues to be considerable "grousing" in the legislature at the federal government's exercising dictatorial authority over states' rights or usurping rights traditionally reserved for the states. One of the latest and most serious examples of usurping of states' rights is the Montgomery Amendment. It is serious because it reverses 200 years of tradition and is, at best, of questionable constitutional compliance. It was adopted after 10 minutes of debate on the floor of the U.S. House and without any public hearing whatsoever. It removes the clear constitutional authority that governors have over the training of the National Guard in peacetime. Governor Schwinden has protested the Montgomery Amendment. He urged adoption of HJR #22.

PROPONENTS: John North testified on behalf of Governor Schwinden and submitted written testimony in support of HJR 22 (Exhibit #6). The Montgomery Amendment severely limits

Common Cause

EXHIBIT #5
DATE 5/10/87
HB 504

Proposed Amendments to HB 504, Introduced Copies

1. Title, line 7
Following: "Laws",
Insert: "or to those alleging that the initiative is unconstitutional on its face."
2. Page 2, line 9
Following: "alleging"
Insert: "the following:
 - a. procedural defects in complying with election laws, or
 - b. that the initiative is unconstitutional on its face."
3. Page 4, line 1
Following: "laws",
Insert: "that the initiative is unconstitutional on its face".

DAILY ROLL CALL

State Administration COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/10/87

NAME	PRESENT	ABSENT	EXCUSED
Walt Sales	✓		
John Phillips	✓		
Bud Campbell	✓		
Dorothy Cody	✓		
Duane Compton	✓		
Gene DeMars	✓		
Harry Fritz	✓		
Harriet Hayne	✓		
Gay Holliday	✓		
Loren Jenkins	✓		
Janet Moore	✓		
Richard Nelson	✓		
Helen O'Connell	✓		
Mary Lou Peterson			
Paul Pistoria			
Rande Roth	✓		
Tonia Stratford	✓		
Timothy Whalen			

VISITORS' REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO. 584DATE 2/10/87SPONSOR Richard

NAME (please <u>print</u>)	REPRESENTING	SUPPORT	OPPOSE
Kim Wile	Common Coz	✓	
LARRY AKEY	SEC OF STATE	✓	
Butch Turk	self	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 11, 1987

The meeting of the State Administration Committee was called to order by Chairman Sales for executive action on February 11, 1987 at 8:00 a.m. in Room 437 of the State Capitol.

ROLL CALL: Rep. Pistoria was excused. All other committee members were present.

DISPOSITION OF HOUSE BILL NO. 418: A DO NOT PASS motion was made by Rep. Nelson; there was no second to the motion. A substitute DO PASS motion was made by Rep. O'Connell and seconded by Rep. Jenkins. Motion failed 6-12. The vote was reversed for a DO NOT PASS AS AMENDED, 12-6.

DISPOSITION OF HOUSE BILL NO. 504: Rep. Whalen moved the amendment submitted by Common Cause (Exhibit #1); there was no second to the motion. Rep. Phillips moved DO PASS, seconded by Rep. Holliday. The motion carried 16-1, Rep. Whalen voting no.

DISPOSITION OF HOUSE JOINT RESOLUTION NO. 22: Rep. Phillips moved DO NOT PASS, seconded by Rep. O'Connell. Motion carried 15-2, Reps. Fritz and Whalen voting no.

DISPOSITION OF HOUSE JOINT RESOLUTION NO. 538: Rep. Phillips moved DO PASS AS AMENDED, seconded by Rep. Jenkins. Motion carried unanimously.

DISPOSITION OF HOUSE BILL NO. 364: Rep. Fritz moved DO PASS AS AMENDED, seconded by Rep. Hayne. Rep. Whalen made a substitute motion to TABLE, seconded by Rep. O'Connell. Motion FAILED 8-10. Vote was reversed for a DO PASS AS AMENDED, 10-8.

DISPOSITION OF HOUSE BILL NO. 552: Rep. Phillips moved to TABLE, seconded by Rep. Cody. Motion carried unanimously.

The committee recessed at 8:45 a.m. and reconvened at 9:00 a.m. for its regularly scheduled meeting.

ROLL CALL: Rep. Pistoria was excused. All other committee members were present.

CONSIDERATION OF HOUSE BILL NO. 582: Rep. Darko, House District #2 and sponsor of the bill, stated the bill was a simple one and she hoped the committee would support it.

*Ken
Johnson/
Common Cause*

EXHIBIT FF 1
DATE 3/11/87
HB 504

Proposed Amendments to HB 504, Introduced Copies

1. Title, line 7
Following: "Laws",
Insert: "or to those alleging that the initiative is unconstitutional on its face."
2. Page 2, line 9
Following: "alleging"
Insert: "the following:"
 - a. procedural defects in complying with election laws, or
 - b. that the initiative is unconstitutional on its face."
3. Page 4, line 1
Following: "laws",
Insert: "that the initiative is unconstitutional on its face".

DAILY ROLL CALL

State Administration COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date

2/11/87

NAME	PRESENT	ABSENT	EXCUSED
Walt Sales	✓		
John Phillips	✓		
Bud Campbell	✓		
Dorothy Cody	✓		
Duane Compton	✓		
Gene DeMars	✓		
Harry Fritz	✓		
Harriet Hayne	✓		
Gay Holliday	✓		
Loren Jenkins	✓		
Janet Moore	✓		
Richard Nelson			
Helen O'Connell	✓		
Mary Lou Peterson	✓		
Paul Pistoria			
Rande Roth	✓		
Tonia Stratford	✓		
Timothy Whalen	✓		

STANDING COMMITTEE REPORT

February 11

19 37

Mr. Speaker: We, the committee on STATE ADMINISTRATION

report HB 504

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

Limit challenges to initiatives prior to election


FIRST

WHITE

reading copy ()
color

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) STATE ADMINISTRATION

PAGE NBR..... 234
 RUN TIME08:32
 RUN DATE.... 04/22/87

CHAIRMAN--SEN. JACK HAFEEY
 NORMAL SCHEDULE==> SITE: ROOM 331

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-CAROL DUVAL

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0459	3/02	3/23		CONCUR AS AMENDED		3/25
KEENAN, NANCY			CHANGE DATE OF MONTANA PRESIDENTIAL PRIMARY			
HB0469	2/11	2/20		CONCUR		2/20
KEENAN, NANCY			ELIMINATE QUALIFICATIONS FOR THE SUPERINTENDENT OF THE MT STATE HOSPITAL			
HB0484	2/11	2/20		CONCUR		2/20
HARPER, HAL			GENERALLY REVISING PROVISIONS OF SHERIFFS' RETIREMENT SYSTEM			
HB0485	2/11	2/20		CONCUR		2/20
THOFT, BOB			INCREASE MAXIMUM PENSION PAID TO SURVIVORS OF VOLUNTEER FIREFIGHTERS			
HB0504	2/16	3/03		CONCUR AS AMENDED	JUDICIARY	3/03
KADAS, MIKE			LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION			
HB0508	2/16	3/03		CONCUR		3/03
CAMPBELL, BUD			ALLOW WAIVER OF BID SECURITY FORFEITURE			
HB0553	2/10	2/13		CONCUR		2/13
SIMON, BRUCE			REQUIRE WARRANTS ISSUED BY SRS TO BE PRESENTED FOR PAYMENT WITHIN 180 DAYS			
HB0623	3/05	3/23		CONCUR		3/23
HARRINGTON, DAN			PREVENT CLOSURE OR SALE OF PROFITABLE LIQUOR STORES			
HB0692	2/23	3/05		CONCUR		3/05
BROWN, JAN			AUTHORIZE STATE AND LOCAL GOVERNMENTS TO USE CROSSOVER REFUNDING BONDS			
HB0706	2/21	3/04		CONCUR		3/04
BROWN, DAVE			REQUIRING PUBLIC NOTICE OF VACANCIES ON CERTAIN COUNCILS, BOARDS, ETC.			
HB0708	3/02	3/20		CONCUR		3/20
NELSON, RICHARD			GENERALLY REVISING PROVISIONS CONCERNING LEGAL HOLIDAYS			

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 3, 1987

The thirtieth meeting of the State Administration Committee was called to order by Chairman Jack Haffey on March 3, 1987 at 10:07 a.m. in Room 331 of the State Capitol.

ROLL CALL: All committee members were present except for Senator Anderson who was excused.

The hearing was opened on House Bill 508.

CONSIDERATION OF HOUSE BILL 508: Representative Bud Campbell, House District 48, Deer Lodge, was sponsor for this bill entitled, "AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO WAIVE THE REQUIREMENT TO FORFEIT BID SECURITY WHEN A SUCCESSFUL BIDDER REFUSES TO EXECUTE PROPOSED CONTRACTS FOR BIDS FOR CONSTRUCTION OF PUBLIC BUILDINGS OR FACILITIES UNDER TITLE 18, CHAPTER 2; AMENDING SECTION 18-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." The bill was at the request of the Department of Administration. It would allow the Department to not require the forfeit of a bid bond in case of a mistake on the bid. The Department does this now anyway and this would just put it into statute.

PROPOSERS: Tom O'Connell, Administrator of the Architect and Engineering Division, stated it would allow the Department to have the opportunity to waive the bid security. Present law says a bid must be kept but in actual practice they do not follow this policy because they feel it is not right to force a contractor into a contract when they can prove an honest error was made. He noted the courts have also upheld the rights of a contractor to withdraw their bids if they can prove an honest error was made. It would just make the law more consistent with the actual operating procedures. (EXHIBIT 1)

OPPOSERS: There were none.

QUESTIONS ON HOUSE BILL 508: Senator Farrell wondered when the errors are discovered and was told they are noted before the state enters into a contract on a public bid. Sometimes errors are discovered right after a bid and the contractor usually asks to be permitted to withdraw his bid and the contract is then awarded to the next low bidder.

Rep. Campbell stated in CLOSING that this applied to bid bonds only. The hearing was CLOSED on House Bill 508.

EXECUTIVE ACTION ON HOUSE BILL 508: Senator Lynch MOVED THAT HOUSE BILL 508 BE CONCURRED IN. Senator Farrell seconded the motion. The motion passed unanimously. Senator Beck will carry the bill on the Senate floor.

The hearing was opened on House Bill 504.

CONSIDERATION ON HOUSE BILL 504: Representative Mike Kadas, House District 59, Missoula, was sponsor for this bill entitled, "AN ACT LIMITING CHALLENGES TO INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS TO THOSE ALLEGING PROCEDURAL DEFECTS IN COMPLYING WITH THE ELECTION LAWS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA." This bill would limit the ability of someone to challenge an initiative that is before the public until after it is voted on. He felt the initiative process is very important and should be protected. During the last few elections there have been challenges before elections and he felt this had unfairly influenced people's minds. He felt people were concerned about how the courts were going to react. If there was a constitutional problem he felt it could be addressed after an election.

PROPOSERS: Larry Akey, Chief Deputy to the Secretary of State, supported the bill with some reservations. He noted there has been a problem in the past few elections where initiatives have been challenged prior to the time an election was held. He believed the initiative process was very important and should be protected. He then distributed some amendments which would define more clearly what a procedural defect was. It would also set a time limit on when pre-election challenge defects could be brought before the courts. They were concerned that the challenges be brought forth in a timely manner. He felt the amendments proposed would improve the bill and urged its passage. (EXHIBIT 2)

Kim Wilson, representing Common Cause, stated they too were concerned about the initiative process and supported the bill with some reservations. He felt it might be restricting the people's powers too much if the people are not allowed to bring forth a constitutional challenge to an initiative prior to an election. He wondered if it was valid to limit a challenge. He was concerned if you did not allow a constitutional challenge before an election, there might be a lot of pressure on the courts to vote the way the people had voted on the initiative. If an initiative was self-executing he wondered if there might be a problem raising a constitutional challenge after an election. He felt the amendments proposed by Larry Akey would help give some clarification to procedural defects but wondered if it was appropriate to set a 20-day time limit.

OPPOSERS: There were none.

QUESTIONS ON HOUSE BILL 504: Senator Haffey asked if these amendments had been proposed in the House. Rep. Kadas stated the House did not address defining the procedural defects but there had been discussion on a time limit which had been turned down. Rep. Kadas stated he preferred there be no time limit because it takes a long period of time to detect fraud sometimes. If the procedural defects were abused it could be changed at a later date. Senator Lynch had a lukewarm reaction to the measure. Senator Farrell asked Rep. Kadas if this would limit challenges in city elections and was told it applies to statewide initiatives only. Senator Haffey wondered what would happen if it were a constitutional initiative which went into effect immediately upon passage of the issue if there could be a challenge. Larry Akey responded the present court is now split on how this would be handled. Senator Hofman wondered if part of the concern was the amount of money that is involved in defending a lawsuit and Rep. Kadas stated this was not his concern but the whole process of the initiatives was. Senator Harding wondered about changing the time limit to 30 days instead of 20. Rep. Kadas stated he preferred no time limit at all.

Rep. Kadas then CLOSED on House Bill 504 by stating he felt it was a significant piece of legislation. He felt setting a time limit might be tightening up the measure too much.

EXECUTIVE ACTION ON HOUSE BILL 504: Senator Lynch MOVED TO ADOPT THE AMENDMENTS PROPOSED BUT STRIKING THE LAST SENTENCE REFERRING TO TIME LIMITS. He felt 20 days was just not a long enough time period. The motion passed unanimously.

Senator Hofman then MOVED THAT HOUSE BILL 504 AS AMENDED BE CONCURRED IN. Senator Rasmussen seconded the motion. Senator Lynch was concerned this might be taking away some due process and limited people from challenging. He was also concerned about a constitutional amendment that was effective upon passage. Senator Harding noted CI-27 Initiative got quite muddled before the last election and felt it was a good bill. Senator Lynch responded that the very fact that CI-27 did make it on the ballot proved that the system does work. Senator Farrell noted that it only takes 15% of the people to get an initiative on the ballot but one person can challenge and he felt this was unfair too. Senator Haffey asked Rep. Kadas if there were lawyers involved in discussions on the House floor and was told there were not. Rep. Bardanoue objected because he feared unconstitutional initiatives might be put on the ballot without challenges. Senator Haffey felt a lot of information is put before the public and if there is something wrong it should be noticed. On a vote of Senator Hofman's MOTION, the motion passed with Senators Lynch and Hirsch voting "no."

The meeting was adjourned at 10:40 a.m.

AMENDMENTS TO

HB504

1. Page 2, line 10.
Following: "laws"
Insert:

" , but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, for example, but not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures or an erroneous or fraudulent count of petition signatures. Pre-election challenges must be filed and served within 20 days after the issue was certified to the governor as provided in 13-27-308."

2. Page 4, line 1.
Following: "13-27-316"
Insert:

" , but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, for example, but not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures or an erroneous or fraudulent count of petition signatures. Pre-election challenges must be filed and served within 20 days after the issue was certified to the governor as provided in 13-27-308."

MARCH 3

87

19.....

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on.....

HOUSE BILL

504

having had under consideration.....

No.....

third

reading copy (

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color

LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION

Kadas (Hoffman)

Respectfully report as follows: That.....

HOUSE BILL

504

No.....

be amended as follows:

1. Page 2, line 10.

Following: "laws"

Strike: "."

Insert: ", but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

Page 4, line 1.

Following: "13-27-316"

Strike: "."

Insert: ", but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

AND AS AMENDED

BE CONCURRED IN

KRASSX KHK
KHKRASS

.....
SENATOR JACK HAFEEY Chairman.

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/3/87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACK HAFHEY	X		
SENATOR WILLIAM FARRELL	X		
SENATOR LES HIRSCH	X		
SENATOR JOHN ANDERSON			E
SENATOR J. D. LYNCH	X		
SENATOR ETHEL HARDING	X		
SENATOR ELEANOR VAUGHN	X		
SENATOR SAM HOFMAN	X		
SENATOR HUBERT ABRAMS	X		
SENATOR TOM RASMUSSEN	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 3

37

19.....

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on

having had under consideration..... HOUSE BILL 504 No.....

third reading copy (blue)
color

LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION Kadas (Hoffman)

Respectfully report as follows: That..... HOUSE BILL 504 No.....
be amended as follows:

1. Page 2, line 10.
Following: "laws"
Strike: ". "
Insert: ", but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."
2. Page 4, line 1.
Following: "13-27-316"
Strike: ". "
Insert: ", but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

AND AS AMENDED
BE CONCURRED IN

XXXXXX
50-7439

XXXXXX
50-7439

SENATOR JACK HAFPEY

Chairman.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) JUDICIARY

PAGE NBR..... 192
 RUN TIME08:32
 RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
 NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0491 SPAETH, GARY	3/02	3/26		CONCUR AMEND CONSTITUTION TO ALLOW RESIDENCY OF LOWER COURT JUDGES BE SET BY LAW		3/28
HB0495 CORNE, DICK	3/02	3/16		CONCUR AS AMENDED EXPAND COVERAGE OF OFFENSE OF CUSTODIAL INTERFERENCE		3/21
HB0501 CODV, DOROTHY	2/21	3/26		CONCUR AS AMENDED INTERPLEADER IN SMALL CLAIMS COURT PROCEDURE		3/26
HB0503 BRADLEY, DOROTHY	2/21	3/24		CONCUR AS AMENDED EXTEND LANDOWNER IMMUNITY TO TOURING OF CULTURAL AND HISTORICAL SITES		3/26
HB0504 KADAS, MIKE	3/09			CONCUR AS AMENDED LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION		3/21
HB0509 SCHYE, TED	2/21	3/09		CONCUR AS AMENDED PROHIBIT THE OPERATION OF AN AIRCRAFT WHILE UNDER INFLUENCE OF ALCOHOL/DRUGS		3/21
HB0546 FRITZ, HARRY	3/02	3/09		CONCUR AS AMENDED MODIFY ABSOLUTE LIABILITY DEFINITION -- APPLY TO DUI OFFENSES		3/13
HB0554 DAILY, FRITZ	2/16	3/23		CONCUR AS AMENDED PAY CRIME VICTIMS THE PERPETRATOR'S PROCEEDS OF THE CRIME		3/26
HB0558 GOULD, BUDD	2/21	3/09		CONCUR REVISE AND CLARIFY RESPONSIBILITY FOR CRIME COMMITTED WHILE INTOXICATED		3/11
HB0564 WILLIAMS, MEL	3/02	3/26		CONCUR AS AMENDED REVISE CITY COURT JURISDICTION AND PROCEDURE		3/26
HB0566 KEENAN, NANCY	3/02	3/16		CONCUR AS AMENDED CHILD OR SPOUSE ABUSE TO PRECLUDE JOINT CUSTODY		3/17

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 17, 1987

The forty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 17, 1987, by the Chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present. Senator Halligan was excused, and appeared later in the meeting.

CONSIDERATION OF HOUSE BILL 141: Representative Francis Bardanouve, House District 16, introduced HB 141, which amends the statutes relating to district court filing fees and establishes a new fee of \$100 for filing a motion for substitution of a judge. He explained when a judge is disqualified in a case it causes a lot of travel time for another judge to come and fill in. He felt this bill will help the expense of traveling in Montana for judges.

PROPONENTS: Henry Loble, District Judge, testified in support of the bill. (Exhibit 1)

Tom Honzel, District Judge, supported the bill. He explained the history of the proposed amended statute, which had to do with Marcus Daily, the Copper King, not liking the district judges in Silver Bow County because they were on the payroll of his rival.

Karl Englund, Montana Trial Lawyers Assn., pointed out the combination of this bill and Rep. Pistoria's bill will cost a person \$275 instead of \$25 for filing a petition for a court trial.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 141: There was none.

Representative Bardanouve closed the hearing on HB 141.

DISCUSSION ON HOUSE BILL 430: Senator Blaylock asked Rep. Brandewie to explain the bill further. Rep. Brandewie said there is a test in the law books for the death penalty, which decides whether a person should have a death penalty or life in prison. He said this bill clears up section 46-18-301 through 46-18-310.

Senator Beck asked why 200 years in jail isn't as good as life in prison. Rep. Brandewie said the life in prison statute needs more definite clarification so one can distinguish which sentencing is worse, 200 years, or life.

Rep. Brandewie closed the hearing on HB 430.

CONSIDERATION OF HOUSE BILL 805: Representative Randy Roth, Billings, Montana, introduced HB 805. (Exhibit 10)

PROPOSERS or OPPOSERS: There were neither.

DISCUSSION ON HOUSE BILL 805: Senator Halligan questioned how a registration can be taken when it is owned by several people. Larry Majerus, Dept. of Justice, said it doesn't matter, the person who was co-owner of the vehicle, who didn't do anything, would have to get complete ownership before he could get the registration back.

Senator Crippen asked if a co-ownership is a partnership, what happens. Mr. Majerus said there has to be an identifiable interest in the vehicle for a second person to be able to receive the suspended registration.

Representative Roth closed the hearing on HB 805.

EXECUTIVE ACTION

ACTION ON HOUSE BILL 430: Senator Blaylock moved House Bill 430 BE CONCURRED IN. The motion CARRIED.

ACTION ON HOUSE BILL 504: House Bill 504 was presented by Representative Mike Kadas, House District 55, for Executive Action. The bill deals with the process of getting an initiative on the ballot fairly. He said if the law would allow a "window" for challenge for 20 or 30 days it would address the problem of getting the court out of the way so the election can go undisturbed. He said the way one should deal with an initiative is not in the courtroom, but on the ballot.

Larry Akey, Secretary of State's Office, presented amendments to HB 504. (Exhibit 11)

Senator Mazurek thought 20 days was a little late. Mr. Akey said there is a period of 20 days before the ballot is voted on. Rep. Kadas felt the amendments put a time limit on the procedural initiatives which he didn't like. The committee WAITED ON ACTION.

ACTION ON HOUSE BILL 805: Senator Halligan said people are going to drive, no matter what you tell them. Senator Blaylock moved to TABLE the bill. The motion CARRIED with Senator Bishop voting no.

ACTION ON HOUSE BILL 277: Senator Halligan moved the Connelly amendments. Senator Mazurek stated it might be hard to get this through with a conference committee. The motion CARRIED. Senator Blaylock mentioned on page 3, lines 2-3, the word "seized pursuant" doesn't really need to be in there. Larry Majerus said that was fine because seized is not used very often. Senator Halligan moved the amendment to strike "seized pursuant" from page 3, lines 2-3. The motion carried.

Senator Halligan moved the bill BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Beck voting no.

ACTION ON HOUSE JOINT RESOLUTION 21: Senator Mazurek did not like the idea that the first judge pick the second judge, because if the first one is a bad judge, then he might pick a second judge who is not very good. He did say this probably wouldn't be used that often.

Senator Pinsoneault moved the resolution BE CONCURRED IN. The motion CARRIED. (See roll call sheet)

ACTION ON HOUSE BILL 566: Senator Halligan moved an amendment to HB 566. (See Standing Committee Report) The motion carried. Senator Brown moved HB 566 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ADJOURNMENT: The committee adjourned at 12:10 p.m.


SENATOR JOE MAZUREK, Chairman

AMENDMENTS TO HB504
(Reference Copy)

1. Page 2, line 8.

Following: "brought"

Strike: remainder of subsection (3).

Insert: "for any of the following causes:

(a) serious and material violation of any provision of the law relating to qualifications for inclusion on the ballot;

(b) constitutional defects in the substance of a proposed ballot issue; or

(c) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

No ballot issue contest may be entertained by the courts of the state before the election unless the contest was filed in the appropriate district court within 20 days after the issue was certified to the governor as provided in 13-27-308. Nothing in this section limits the right to challenge the substance of a measure enacted by a vote of the people except that the courts of the state may not entertain such an action, commenced more than 20 days after the issue was certified to the governor, until after the election thereon."

2. Page 4, line 6.

Following: "brought"

Strike: remainder of subsection (6).

Insert: "for any of the following causes:

(a) serious and material violation of any provision of the law relating to qualifications for inclusion on the ballot;

(b) constitutional defects in the substance of a proposed ballot issue; or

(c) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

No ballot issue contest may be entertained by the courts of the state before the election unless the contest was filed in the appropriate district court within 20 days after the issue was certified to the governor as provided in 13-27-308. Nothing in this section limits the right to challenge the substance of a measure enacted by a vote of the people except that the courts of the state may not entertain such an action, commenced more than 20 days after the issue was certified to the governor, until after the election thereon."

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1987

The forty-eighth meeting of the Senate Judiciary Committee was called to order at 9:00 a.m. on March 21, 1987, by the chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senators Blaylock and Crippen, who were excused.

EXECUTIVE SESSION

ACTION ON HOUSE BILL 696: Senator Halligan moved to TABLE House Bill 696. Senators Galt, Brown, Beck and Bishop voted no. The motion FAILED because of a tie. The committee decided to wait on action until Senators Blaylock and Crippen returned.

ACTION ON HOUSE BILL 509: Valencia Lane explained the amendments she had prepared. (Exhibit 1) Senator Pinsoneault checked into the aircraft safety laws and found one is legally drunk in a plane at .04. Senator Mazurek thought the 5th amendment should strike "to have been" in the 10th line, and insert "was". The committee agreed. Senator Pinsoneault moved the changed amendments. The motion carried. Senator Pinsoneault moved House Bill 509 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 504: Valencia Lane explained the prepared amendments. (Exhibit 2) Senator Mazurek asked how one determines in HB 504 amendment #3, (i), what is "serious and material" in violating qualification for the ballot. Senator Brown suggested illegal signatures. He felt one would have to have quite a few to make a difference. Senator Mazurek suggested taking "serious and material" out of the amendments. The committee agreed. Senator Brown moved the amendments, and the motion carried. Senator Brown moved House Bill 504 BE CONCURRED IN AS AMENDED. The motion carried with Senators Halligan and Pinsoneault voting no.

ACTION ON HOUSE BILL 470: Valencia Lane presented prepared amendments. (Exhibit 3) Senator Mazurek felt the amendments left wide open, juvenile records, which he did not like.

Proposed amendments to HB504, reference copy (salmon)

1. Title, lines 5 through 7.

Following: "ELECTIONS" on line 5

Strike: the remainder of line 5 through "LAWS" on line 7

2. Page 2, lines 7 through 17.

Strike: subsection (3) in its entirety

Insert: "(3) (a) Except as provided in subsection (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

~~*(i) serious and material~~ violation of any provision of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defects in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in this subsection limits the right to challenge a measure enacted by a vote of the people."

3. Page 4, lines 5 through 15.

Strike: subsection (6) in its entirety

Insert: "(6) (a) Except as provided in subsection (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

~~(i) serious and material~~ violation of any provision of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defects in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in this subsection limits the right to challenge a measure enacted by a vote of the people."

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 21

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>		X	X
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>		X	X
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 23

19 87

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration **HOUSE BILL** No. **504**

Ref. **salmon**
reading copy ()
color

Limit challenges to initiatives prior to election.
Kadas 4R (Hofman)

Respectfully report as follows: That **HOUSE BILL** No. **504**

1. Title, lines 5 through 7.

Following: "ELECTIONS" on line 5

Strike: the remainder of line 5 through "LAWS" on line 7

2. Page 2, lines 7 through 17.

Strike: subsection (3) in its entirety

Insert: "(3) (a) Except as provided in subsection (3) (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

(i) violation of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defect in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3) (a) (iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people."

~~XXXXXXXXXX~~
DO PASS

~~XXXXXXXXXX~~ CONTINUED
DO NOT PASS

Senator Mazurek

Chairman.

3. Page 4, lines 5 through 15.

Strike: subsection (6) in its entirety

Insert: "(6) (a) Except as provided in subsection (6) (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-309, and only for the following causes:

(i) violation of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defect in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (6) (a) (iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people."

Amendments, HB 504

7020h/C:JEANNE\WP:jj

CONTINUED

AND AS AMENDED

BE CONCURRED IN

HOUSE BILL NO. 504
INTRODUCED BY KADAS

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING CHALLENGES TO INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS TO THOSE ALLEGING PROCEDURAL DEFECTS IN COMPLYING WITH THE ELECTION LAWS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA."

WHEREAS, Article II, section 1, of the Montana Constitution recognizes that all political power is vested in and derived from the people and that all government of right originates with the people, is founded on their will only, and is instituted solely for the good of the whole; and

WHEREAS, the right of the people to make statutory changes by initiative is retained in Article III, section 4, of the Montana Constitution; and

WHEREAS, the right of the people to alter their Constitution by initiative is retained in Article XIV, section 9, of the Montana Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section. 3-2-202, MCA, is amended to read:

"3-2-202. Original jurisdiction. (1) In Except as provided in subsection (3), in the exercise of its original

jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

(3) Prior to an election on a ballot measure submitted by initiative or referendum, an action may only be brought alleging procedural defects in complying with the election laws, but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures.

(3) (A) Except as provided in subsection (3)(B), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

(1) Violation of the law relating to qualifications for inclusion on the ballot;

REFERENCE BILL

HB 504

SECOND PRINTING

AS AMENDED

1 (II) CONSTITUTIONAL DEFECT IN THE SUBSTANCE OF A
2 PROPOSED BALLOT ISSUE; OR

3 (III) ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
4 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

5 (B) A CONTEST OF A BALLOT ISSUE BASED ON SUBSECTION
6 (3)(A)(I) OR (3)(A)(III) MAY BE BROUGHT AT ANY TIME AFTER
7 DISCOVERY OF ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
8 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

9 (C) NOTHING IN SUBSECTION (3) LIMITS THE RIGHT TO
10 CHALLENGE A MEASURE ENACTED BY A VOTE OF THE PEOPLE."

11 Section 2. Section 3-5-302, MCA, is amended to read:

12 "3-5-302. Original jurisdiction. (1) The Except as
13 provided in subsection (6), the district court has original
14 jurisdiction in:

15 (a) all criminal cases amounting to felony;

16 (b) all civil and probate matters;

17 (c) all cases at law and in equity;

18 (d) all cases of misdemeanor not otherwise provided
19 for; and

20 (e) all such special actions and proceedings as are
21 not otherwise provided for.

22 (2) The district court has concurrent original
23 jurisdiction with the justice's court in the following
24 criminal cases amounting to misdemeanor:

25 (a) misdemeanors arising at the same time as and out

1 of the same transaction as a felony or misdemeanor offense
2 charged in district court;

3 (b) misdemeanors resulting from the reduction of a
4 felony or misdemeanor offense charged in the district court;
5 and

6 (c) misdemeanors resulting from a finding of a lesser
7 included offense in a felony or misdemeanor case tried in
8 district court.

9 (3) The district court has exclusive original
10 jurisdiction in all civil actions that might result in a
11 judgment against the state for the payment of money.

12 (4) The district court has the power of naturalization
13 and of issuing papers therefor in all cases where it is
14 authorized to do so by the laws of the United States.

15 (5) The district court and its judges have power to
16 issue, hear, and determine writs of mandamus, quo warranto,
17 certiorari, prohibition, and injunction, other original
18 remedial writs, and all writs of habeas corpus on petition
19 by or on behalf of any person held in actual custody in
20 their respective districts. Injunctions and writs of
21 prohibition and habeas corpus may be issued and served on
22 legal holidays and nonjudicial days.

23 ~~(6) Prior to an election on a ballot measure submitted~~
24 ~~by initiative or referendum, an action may only be brought~~
25 ~~alleging procedural defects in complying with the election~~

~~laws,--or--as--provided--in--13-27-316,--BUT--NO--ACTION--MAY--BE
BROUGHT--CHALLENGING--CONSTITUTIONAL--DEFECTS--IN--THE--SUBSTANCE
OF--A--PROPOSED--BALLOT--ISSUE--UNTIL--AFTER--THE--ELECTION--
PROCEDURAL--DEFECTS--INCLUDE--SERIOUS--AND--MATERIAL--VIOLATION--OF
ANY--PROVISION--OF--THE--ELECTION--LAWS,--BUT--ARE--NOT--LIMITED--TO
LAWS--RELATING--TO--QUALIFICATION--FOR--INCLUSION--ON--THE--BALLOT,
ILLEGAL--PETITION--SIGNATURES,--OR--AN--ERRONEOUS--OR--FRAUDULENT
COUNT--OF--PETITION--SIGNATURES.~~

(6) (A) EXCEPT AS PROVIDED IN SUBSECTION (6)(B), A
CONTEST OF A BALLOT ISSUE SUBMITTED BY INITIATIVE OR
REFERENDUM MAY BE BROUGHT PRIOR TO THE ELECTION ONLY IF IT
IS FILED WITHIN 30 DAYS AFTER THE DATE ON WHICH THE ISSUE
WAS CERTIFIED TO THE GOVERNOR, AS PROVIDED IN 13-27-308, AND
ONLY FOR THE FOLLOWING CAUSES:

(I) VIOLATION OF THE LAW RELATING TO QUALIFICATIONS
FOR INCLUSION ON THE BALLOT;

(II) CONSTITUTIONAL DEFECT IN THE SUBSTANCE OF A
PROPOSED BALLOT ISSUE; OR

(III) ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

(B) A CONTEST OF A BALLOT ISSUE BASED ON SUBSECTION
(6)(A)(I) OR (6)(A)(III) MAY BE BROUGHT AT ANY TIME AFTER
DISCOVERY OF ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

(C) NOTHING IN SUBSECTION (6) LIMITS THE RIGHT TO

1 CHALLENGE A MEASURE ENACTED BY A VOTE OF THE PEOPLE."

-End-

MARCH 3

87

19.....

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on.....

HOUSE BILL

504

having had under consideration.....

No.....

third

blue

reading copy ()

color

LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION

Kadas (Hoffman)

Respectfully report as follows: That.....

HOUSE BILL

504

No.....

be amended as follows:

1. Page 2, line 10.

Following: "laws"

Strike: ". "

Insert: "; but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

2. Page 4, line 1.

Following: "13-27-316"

Strike: ". "

Insert: "; but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

AND AS AMENDED
BE CONCURRED IN

XXXXXX KAK

XXXXXX

.....
SENATOR JACK HAFFEY Chairman.

STANDING COMMITTEE REPORT

SENATE JUDICIARY

HB 504

Page 2

March 23

19 87

March 23 19 87

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

having had under consideration HOUSE BILL No. 504

Ref. salmon
reading copy (color)

Limit challenges to initiatives prior to election.
Kadas ~~fx~~ (Hofman)

HOUSE BILL 504

Respectfully report as follows: That

1. Title, lines 5 through 7.
Following: "ELECTIONS" on line 5
Strike: the remainder of line 5 through "LAWS" on line 7

2. Page 2, lines 7 through 17.
Strike: subsection (3) in its entirety
Insert: "(3) (a) Except as provided in subsection (3) (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:
(i) violation of the law relating to qualifications for inclusion on the ballot;
(ii) constitutional defect in the substance of a proposed ballot issue; or
(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(b) A contest of a ballot issue based on subsection (3) (a) (iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(c) Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people."

3. Page 4, lines 5 through 15.
Strike: subsection (6) in its entirety
Insert: "(6) (a) Except as provided in subsection (6) (b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:
(i) violation of the law relating to qualifications for inclusion on the ballot;
(ii) constitutional defect in the substance of a proposed ballot issue; or
(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(b) A contest of a ballot issue based on subsection (6) (a) (iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(c) Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people."

Amendments, HB 504
7080h/C:JEANNE\WP:jj

XXXXXX

XXXXXXXXXX CONTINUED

SM
Senator Mazurek

Chairman.

~~CONCURRED~~

AND AS AMENDED
BE CONCURRED IN

KMK

J. Mazurek
Senator Mazurek

COMMITTEE OF THE WHOLE AMENDMENT

520p.cwr

SENATE

3-27-87

DATE

3:20

TIME

504

CHAIRMAN: I MOVE TO AMEND House Bill

No.

reference reading copy (salmon) as follows:
Color

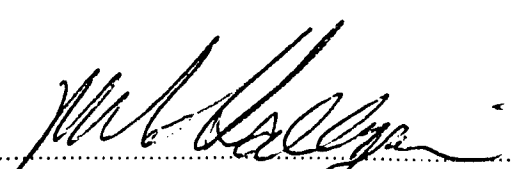
PENDING SENATE JUDICIARY STANDING COMMITTEE REPORT, DATED MARCH 23,

Amendment No. 2, subsection (3) (b).
Following: "based on"
Like: "subsection"
Part: "subsections (3) (a) (i) or"

Amendment No. 3, subsection (6) (b).
Following: "based on"
Like: "subsection"
Part: "subsections (6) (i) or"

OPT

ECT


Senator HALLIGAN

HOUSE BILL NO. 504
INTRODUCED BY KADAS

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING CHALLENGES TO INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS TO THOSE ALLEGING PROCEDURAL DEFECTS IN COMPLYING WITH THE ELECTION LAWS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA."

WHEREAS, Article II, section 1, of the Montana Constitution recognizes that all political power is vested in and derived from the people and that all government of right originates with the people, is founded on their will only, and is instituted solely for the good of the whole; and

WHEREAS, the right of the people to make statutory changes by initiative is retained in Article III, section 4, of the Montana Constitution; and

WHEREAS, the right of the people to alter their Constitution by initiative is retained in Article XIV, section 9, of the Montana Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section. 3-2-202, MCA, is amended to read:

"3-2-202. Original jurisdiction. (1) In Except as provided in subsection (3), in the exercise of its original

jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

(3) Prior to an election on a ballot measure submitted by initiative or referendum, an action may only be brought alleging procedural defects in complying with the election laws, but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures.

(3) (A) EXCEPT AS PROVIDED IN SUBSECTION (3)(B), A CONTEST OF A BALLOT ISSUE SUBMITTED BY INITIATIVE OR REFERENDUM MAY BE BROUGHT PRIOR TO THE ELECTION ONLY IF IT IS FILED WITHIN 30 DAYS AFTER THE DATE ON WHICH THE ISSUE WAS CERTIFIED TO THE GOVERNOR, AS PROVIDED IN 13-27-308, AND ONLY FOR THE FOLLOWING CAUSES:

(1) VIOLATION OF THE LAW RELATING TO QUALIFICATIONS FOR INCLUSION ON THE BALLOT;

REFERENCE BILL

HB 504

SECOND PRINTING

AS AMENDED

1 (II) CONSTITUTIONAL DEFECT IN THE SUBSTANCE OF A
2 PROPOSED BALLOT ISSUE; OR

3 (III) ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
4 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

5 (B) A CONTEST OF A BALLOT ISSUE BASED ON SUBSECTION
6 (3)(A)(I) OR (3)(A)(III) MAY BE BROUGHT AT ANY TIME AFTER
7 DISCOVERY OF ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
8 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

9 (C) NOTHING IN SUBSECTION (3) LIMITS THE RIGHT TO
10 CHALLENGE A MEASURE ENACTED BY A VOTE OF THE PEOPLE."

11 Section 2. Section 3-5-302, MCA, is amended to read:

12 "3-5-302. Original jurisdiction. (1) The Except as
13 provided in subsection (6), the district court has original
14 jurisdiction in:

15 (a) all criminal cases amounting to felony;

16 (b) all civil and probate matters;

17 (c) all cases at law and in equity;

18 (d) all cases of misdemeanor not otherwise provided
19 for; and

20 (e) all such special actions and proceedings as are
21 not otherwise provided for.

22 (2) The district court has concurrent original
23 jurisdiction with the justice's court in the following
24 criminal cases amounting to misdemeanor:

25 (a) misdemeanors arising at the same time as and out

1 of the same transaction as a felony or misdemeanor offense
2 charged in district court;

3 (b) misdemeanors resulting from the reduction of a
4 felony or misdemeanor offense charged in the district court;
5 and

6 (c) misdemeanors resulting from a finding of a lesser
7 included offense in a felony or misdemeanor case tried in
8 district court.

9 (3) The district court has exclusive original
10 jurisdiction in all civil actions that might result in a
11 judgment against the state for the payment of money.

12 (4) The district court has the power of naturalization
13 and of issuing papers therefor in all cases where it is
14 authorized to do so by the laws of the United States.

15 (5) The district court and its judges have power to
16 issue, hear, and determine writs of mandamus, quo warranto,
17 certiorari, prohibition, and injunction, other original
18 remedial writs, and all writs of habeas corpus on petition
19 by or on behalf of any person held in actual custody in
20 their respective districts. Injunctions and writs of
21 prohibition and habeas corpus may be issued and served on
22 legal holidays and nonjudicial days.

23 ~~(6) Prior to an election on a ballot measure submitted~~
24 ~~by initiative or referendum, an action may only be brought~~
25 ~~alleging procedural defects in complying with the election~~

1 ~~laws,--or--as--provided--in--13-27-316,--BUT--NO--ACTION--MAY--BE~~
 2 ~~BROUGHT--CHALLENGING--CONSTITUTIONAL--DEPECTS--IN--THE--SUBSTANCE~~
 3 ~~OF--A--PROPOSED--BALLOT--ISSUE--UNTIL--AFTER--THE--ELECTION.~~
 4 ~~PROCEDURAL--DEPECTS--INCLUDE--SERIOUS--AND--MATERIAL--VIOLATION--OF~~
 5 ~~ANY--PROVISION--OF--THE--ELECTION--LAWS,--BUT--ARE--NOT--LIMITED--TO~~
 6 ~~LAWS--RELATING--TO--QUALIFICATION--FOR--INCLUSION--ON--THE--BALLOT,~~
 7 ~~ILLEGAL--PETITION--SIGNATURES,--OR--AN--ERRONEOUS--OR--FRAUDULENT~~
 8 ~~COUNT--OF--PETITION--SIGNATURES.~~

9 (6) (A) EXCEPT AS PROVIDED IN SUBSECTION (6)(B), A
 10 CONTEST OF A BALLOT ISSUE SUBMITTED BY INITIATIVE OR
 11 REFERENDUM MAY BE BROUGHT PRIOR TO THE ELECTION ONLY IF IT
 12 IS FILED WITHIN 30 DAYS AFTER THE DATE ON WHICH THE ISSUE
 13 WAS CERTIFIED TO THE GOVERNOR, AS PROVIDED IN 13-27-308, AND
 14 ONLY FOR THE FOLLOWING CAUSES:

15 (I) VIOLATION OF THE LAW RELATING TO QUALIFICATIONS
 16 FOR INCLUSION ON THE BALLOT;

17 (II) CONSTITUTIONAL DEFECT IN THE SUBSTANCE OF A
 18 PROPOSED BALLOT ISSUE; OR

19 (III) ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
 20 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

21 (B) A CONTEST OF A BALLOT ISSUE BASED ON SUBSECTION
 22 (6)(A)(I) OR (6)(A)(III) MAY BE BROUGHT AT ANY TIME AFTER
 23 DISCOVERY OF ILLEGAL PETITION SIGNATURES OR AN ERRONEOUS OR
 24 FRAUDULENT COUNT OR CANVASS OF PETITION SIGNATURES.

25 (C) NOTHING IN SUBSECTION (6) LIMITS THE RIGHT TO

1 CHALLENGE A MEASURE ENACTED BY A VOTE OF THE PEOPLE."

-End-